

23887. Misbranding of potatoes. U. S. v. John H. Morrison. Plea of guilty. Fine, \$1. (F. & D. no. 32229. Sample no. 46451-A.)

Sample sacks of potatoes taken from the shipment involved in this case were found to contain less than 100 pounds, the weight declared on the label.

On July 23, 1934, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against John H. Morrison, trading as J. H. Morrison, Lockport, La., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about May 25, 1933, from the State of Louisiana into the State of Illinois, of a quantity of potatoes which were misbranded. The article was labeled in part: "100 Lbs. Net When Packed Triumph Potatoes LaFourche Valley."

The article was alleged to be misbranded in that the statement "100 Lbs. Net" was false and misleading, and for the further reason that it was labeled so as to deceive and mislead the purchaser, since practically all of the sacks examined were found to contain less than 100 pounds of the article. Misbranding was alleged for the further reason that the article was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.

On December 13, 1934, the defendant entered a plea of guilty, and the court imposed a fine of \$1.

M. L. WILSON, Acting Secretary of Agriculture.

23888. Adulteration of apples. U. S. v. William Hamlin. Plea of guilty. Fine, \$50. (F. & D. no. 32234. Sample no. 59451-A.)

Examination of the apples involved in this case showed the presence of arsenic and lead in amounts which might have rendered them injurious to health.

On July 24, 1934, the United States attorney for the Western District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court an information against William Hamlin, Glenn, Mich., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about October 24, 1933, from the State of Michigan into the State of Illinois, of a quantity of apples which were adulterated. The article was labeled in part: "Will Hamlin Glenn Mich. Spy."

The article was alleged to be adulterated in that it contained added poisonous and deleterious ingredients, arsenic and lead, in amounts which might have rendered it injurious to health.

On November 9, 1934, the defendant entered a plea of guilty to the information and the court imposed a fine of \$50.

M. L. WILSON, Acting Secretary of Agriculture.

23889. Misbranding of olive oil. U. S. v. 40 Cans of Olive Oil. Tried to a jury. Verdict for the Government. Judgment of condemnation, forfeiture, and sale. (F. & D. no. 32285. Sample no. 67054-A.)

Sample cans of olive oil taken from the shipment involved in this case were found to contain less than 1 gallon, the volume declared on the label.

On March 9, 1934, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 40 cans of olive oil at Scranton, Pa., alleging that the article had been shipped in interstate commerce on or about January 16, 1934, by the Rome Importing Co., from New York, N. Y., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Net Contents One Gallon superfine Olive Oil * * * Rome Brand * * * Olio d'Oliva * * * Marca Roma."

The article was alleged to be misbranded in that the statement "Net Contents One Gallon" was false and misleading and tended to deceive and mislead the purchaser. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.

On November 15, 1934, the Rome Importing Co., having filed an answer denying the material allegations of the libel, the case came on for trial before jury. Evidence was introduced on behalf of the Government, at the con-

clusion of which, no one appearing as the claimant, the court instructed the jury as follows: (Johnson, D. J.)

✓ "Ladies and gentlemen of the jury: Now, you have heard the evidence here. The defendants have not appeared either by counsel or the person in interest, and they have had notice of this case, the list has been printed—counsel, their names appear on there—they have been called out—they are residents of New York City—they have had every opportunity to appear and they have not appeared. So we have gone on and heard the Government's side of the case.

"The Government has to prove the Government's contention before the Government is entitled to a verdict. In other words, you cannot render a verdict merely because the other side is not here, and I want you to consider it just the same as if they were here, and give the other side every reasonable consideration.

"The question for you to determine is whether these gallon cans of olive oil were underweight. You see, the Federal Government has jurisdiction of this question when the cans are shipped from one State to another, and there is no question here about that—it is admitted in the pleadings—so that leaves but the one question of facts for you to decide, and that is whether they are underweight.

"Now there are rules and regulations regarding that matter of underweight, and that is, while human measurements cannot be perfect, the law provides that there must be a reasonable tolerance; but the Department of Agriculture is allowed to make rules and regulations—reasonable rules and regulations—and the Department has established rules and regulations to the effect that, bearing upon this question of reasonable shortage and tolerance, that if there is a slight discrepancy and as many discrepancies over the weight as under, that there is no violation of the law, and the reason for that you see, is this: If people are honest and fair and careful, that if a mistake is made, they won't all be made in one way, against the consumers, and in favor of themselves. It seems that each of these cans, the twenty of them, are underweight.

"I want you to take this evidence, and from the law as I have explained, determine whether the verdict should be for the Government or whether it should be for the defendant. Suppose someone go around—and unless you want to go out of the box—if you can't agree, I will let you go out. Determine that one question, whether there was a shortage, as provided by the law, in weight. If there was, then the verdict should be for the Government; otherwise, if there wasn't a shortage, then it should be for the defendant. Then we will prepare a written form for you, in accordance with what you find, when you have found it.

"You can just go around and ask each other how you vote, whether for the Government or for the defendant."

✓ The jury having reported that they all found for the Government, the court continued: "This is the form of the verdict: We find in favor of the plaintiff, the United States of America, and the articles described and referred to as forty 1-gallon cans, more or less, Superfine Olive Oil, in the libel, are misbranded, contrary to the Food and Drugs Act of the United States of America."

Judgment of condemnation and forfeiture was thereupon entered and the court ordered that the product be relabeled by obliterating the words "One Gallon" and substituting therefor the statement, "Containing not less than 3 quarts and 14 ounces", and that it be sold by the United States marshal.

M. L. WILSON, *Acting Secretary of Agriculture.*

23890. Adulteration of canned tomatoes. U. S. v. 710 Cases of Canned Tomatoes. Default decree of condemnation and destruction. (F. & D. no. 32289. Sample no. 18457-A.)

This case involved an interstate shipment of canned tomatoes, samples of which were found to contain maggots.

On March 12, 1934, the United States attorney for the Eastern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 710 cases of canned tomatoes at Jacksonville, Tex., alleging that the article had been shipped in interstate commerce on or about October 17, 1933, by the Johnson Canning Co., from Johnson, Ark., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "White Lilly of Arkansas Brand Hand Packed Tomatoes * * * Johnson Canning Co. * * * Johnson, Ark."

The article was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.